IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. REVISION APPLICATION NO. 07 OF 2005

WITH

CRI. REVISION APPLICATION NO. 08 OF 2005

Mr. Pradeep Ramrakhayani ..Applicant.

V/s.

M/s. Emkay Agencies Pvt.Ltd., & Anr. .. Respondents.

Shri. Niranjan Mundargi for the Applicant.
Shri R.A. Sanghavi for Respondent No.1.
Shri V.B.Konde-Deshmukh,APP for Respondent No.1-State.

CORAM : A.M.KHANWILKAR, J.
DATED : MARCH 07, 2005

PC :-

1. Heard counsel for the parties in both the revisions.

2. The first contention raised before this court is that the proceeding against the applicant has vitiated, as no opportunity was offered to the applicant to adduce the evidence. This submission is canvassed, taking support from the statement made on behalf of the applicant accused before the lower court in his statement recorded under section 313 of the

Code. While answering question No.12, the applicant stated that he would like to examine himself on oath. This position is correct. However, the fact that the applicant offered to adduce the evidence as stated in his 313 statement can be no assistance to the applicant because there is nothing on record to even remotely suggest that thereafter, the applicant made any attempt to enter into witness box so as to give evidence. No formal application is made by the applicant in that behalf. If it is so, no fault can be found with the decision of the court below in proceeding with the matter on merits.

3. To get over this position, the counsel for the applicant contends that there is discrepancy in the documentary evidence pressed into service on behalf of the complainant, no legal liability can be ascribed to the applicant on the basis of those documents i.e. Exhs. 32 and 35. This submission clearly overlooks that the applicant accused cannot be permitted to question the correctness of the decision rendered by the two courts below for the simple reason that the applicant has not entered into the witness box nor chose to adduce evidence to rebut the legal presumption against him in respect of the cheque in

question. In other words, the legal presumption under section 138 of the Negotiable Instruments Act has remained unrebutted. It necessarily follows that the applicant was liable to be proceeded under section 138 of the said Act. No other contention has been raised before me.

4. For the reasons recorded above, I see no basis to interfere with the concurrent view taken by the two courts below, recording the findings of fact against the applicant in relation to the offence committed, as aforesaid. Hence, both these revision applications deserve to be dismissed.

5. The court below has directed the applicant to pay amount of compensation.

6. The appellate court while maintaining the conclusion reached by the trial court, had shown indulgence to the applicant by directing him to pay or deposit an amount of compensation by way of six equal monthly instalments payable on 15th of each month from January, 2005 onwards.

7. The counsel for the applicant submits that the

applicant is not in a position to comply with that direction of the courts below and instead ready to offer instalment in the sum of Rs.20,000/- per month till the entire amount is made over to the respondent -complainant. However, counsel for the respondent is not interested in accepting the offer made by the applicant because the amount which is payable to the respondent is pending since, 1999. There is no reason to discredit the stand taken by the respondent in the fact situation of the present case.

8. Accordingly, the direction given by the appellate authority will have to be maintained as it is.

9. Hence, both these revision applications disposed of with clarification that the amount already paid by the applicant to the respondent will have to be adjusted towards further instalments. The applicant shall pay the remaining instalment on and from 15th March, 2005. The default of the second instalment will be paid on 15th March, 2005 and subsequent to that he shall regularly pay the succeeding instalments on or before 15th day of every English calendar month.

10. Ordered accordingly.

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